

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE

ANTHONY-DECARLO HAYS, SR.,	)	
	)	
Plaintiff,	)	
	)	
VS.	)	No. 11-2193-JDT-tmp
	)	
A. C. WHARTON, et al.,	)	
	)	
Defendants.	)	

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ORDER ADOPTING REPORT AND RECOMMENDATION  
OF MAGISTRATE JUDGE FOR DISMISSAL  
AND  
CERTIFYING THAT AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH

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On July 1, 2014, Magistrate Judge Tu M. Pham issued a report and recommendation [DE# 63] that Defendants' motion to dismiss for failure to prosecute [DE# 61] be granted. Plaintiff has filed objections to the report and recommendation [DE# 64] in which he contends that the Magistrate Judge and Defendants have undertaken a "concerted effort" to prevent his proceeding with this lawsuit. He also contends that the United States Postal Service has interfered with his mail delivery and that the Memphis Police Department has made threats against his life so that he had to move and could not receive his mail.

Having carefully reviewed the record, the controlling case law, and Plaintiff's objections, the court agrees with the Magistrate Judge's recommendation. Because the Magistrate Judge thoroughly explained his decision and because an issuance of a more detailed written opinion would be unnecessarily duplicative and would not enhance this

court's jurisprudence, the court ADOPTS the report and recommendation for the reasons set forth by Magistrate Judge Pham. Defendants' motion to dismiss is GRANTED, and the case is hereby DISMISSED with prejudice. Additionally, the motion to dismiss of Defendant Deneen Alsadi [DE# 66] is DENIED as moot.

The court must also consider whether Plaintiff should be allowed to appeal this decision *in forma pauperis*, should he seek to do so. Pursuant to the Federal Rules of Appellate Procedure, a non-prisoner desiring to proceed on appeal *in forma pauperis* must obtain pauper status under Fed. R. App. P. 24(a). See Callihan v. Schneider, 178 F.3d 800, 803-04 (6th Cir. 1999). Rule 24(a) provides that if a party seeks pauper status on appeal, he must first file a motion in the district court, along with a supporting affidavit. Fed. R. App. P. 24(a)(1). However, Rule 24(a) also provides that if the district court certifies that an appeal would not be taken in good faith, or otherwise denies leave to appeal *in forma pauperis*, the party must file his motion to proceed *in forma pauperis* in the Court of Appeals. Fed. R. App. P. 24(a)(4)-(5).

The good faith standard is an objective one. Coppedge v. United States, 369 U.S. 438, 445 (1962). The test for whether an appeal is taken in good faith is whether the litigant seeks appellate review of any issue that is not frivolous. Id. It would be inconsistent for a district court to determine that a complaint should be dismissed but has sufficient merit to support an appeal *in forma pauperis*. See Williams v. Kullman, 722 F.2d 1048, 1050 n.1 (2d Cir. 1983). The same considerations that lead the court to dismiss this case also compel the conclusion that an appeal would not be taken in good faith.

It is CERTIFIED, pursuant to Fed. R. App. P. 24(a), that any appeal in this matter by Plaintiff is not taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED. Accordingly, if Plaintiff files a notice of appeal, he must also pay the full appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals within thirty (30) days.<sup>1</sup>

The clerk is directed to enter judgment.

IT IS SO ORDERED.

s/ **James D. Todd**  
JAMES D. TODD  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Pursuant to Fed. R. App. P. 3(a), any notice of appeal should be filed in this court. A motion to appeal *in forma pauperis* then should be filed directly in the United States Court of Appeals for the Sixth Circuit. Unless he is specifically instructed to do so, Plaintiff should not send to this court copies of documents intended for filing in the Sixth Circuit.